

UNITED STATES DISTRICT COURT

Northern District of Alabama

Office of the Clerk

Room 140, 1729 5th Avenue North

Birmingham, Alabama 35203

(205) 731-1700

FILED  
CLERKS OFFICE  
2004 JUN -7 P 1:24

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Perry Mathis  
Clerk

Connie M. Collins  
Chief Deputy Clerk

04 11239 RGS

MAGISTRATE JUDGE *Alexander*

June 4, 2004

Tony Anastas, Clerk of Court  
1 Courthouse Way  
Boston, Massachusetts, 02210

Case Number: CV-04-H--344-S

Dear Clerk of Court:

In accordance with the order of this court entered May 20, 2004, the above-entitled civil action is transferred to your court for further litigation. Enclosed is a certified copy of the order of transfer, a certified copy of the docket entries, and the original record on file. Please acknowledge receipt on the attached copy of this letter.

Sincerely,

PERRY D. MATHIS, CLERK

By: *Daryl Ramin*  
Deputy Clerk

PDM:ddr

Enclosures

xc: Counsel

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

FILED

04 MAY 20 PM 3:04

U.S. DISTRICT COURT  
N.D. OF ALABAMA

P & S X-RAY CO., INC., )  
d/b/a MEDICAL IMAGING )  
SYSTEMS, a domestic corporation, )

PLAINTIFF,

VS.

HOLOGIC, INC., a foreign )  
corporation, )

DEFENDANT.

CV-04-H-344-S

ENTERED

MAY 20 2004

ORDER

The complaint, as amended herein, seeks to redress an alleged wrongful termination of a distributorship franchise which is the subject of an agreement between plaintiff, as the distributor, and defendant, as the manufacturer, of mammography equipment. The complaint has three additional claims associated with the alleged wrongful termination: the first for intentional interference with business relations; the second for fraudulent suppression; and, the third for accounting. The distributorship agreement which is the subject of the claims was entered into between the parties as of October 1, 2001 for the fiscal year ending September 30, 2002 and contained an automatic renewal provision. (Amend. Compl. ¶14) Plaintiff alleges that the agreement was renewed for the fiscal year ending September 30, 2003 pursuant to that renewal provision. (Amend. Compl. ¶17)

A TRUE COPY  
PERRY D. MATHIS, CLERK  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
BY: *Daryl Ramin*  
DEPUTY CLERK

2:04cv344 #15

Page 1/3

15

And, plaintiff alleges that the agreement was again renewed for the fiscal year ending September 30, 2004 pursuant to that renewal provision. (Amend. Compl. ¶18) In ¶53 of the amended complaint, plaintiff alleges the distributorship agreement does not expire until September 30, 2004. As its first cause of action, plaintiff seeks damages for a breach of such agreement and a wrongful termination of the distributorship franchise given it under the agreement. As noted earlier, three additional claims associated with the alleged wrongful termination are also asserted in the complaint, as amended.

Paragraph 14(h) of the distributorship agreement which covered fiscal year October 1, 2001 - September 30, 2002 (and hence any agreement resulting from the automatic renewal of that agreement) contained the following provision:

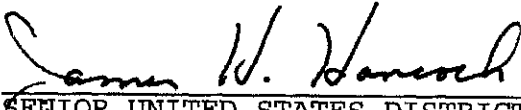
(h) Governing Law; Jurisdiction. The parties hereby specifically agree that this Agreement shall be governed by and shall be subject to the procedural and substantive laws of the Commonwealth of Massachusetts excluding its conflict of law provisions and the United Nations Convention for the International Sale of Goods. Any action relating to this Agreement, the parties' relationship, or goods or services provided, purchased or licensed hereunder, shall be brought and tried in the state or federal courts residing in the Commonwealth of Massachusetts.

(See Exhibit 1 to Affidavit of Mary Echevarria attached to defendant's March 17, 2004 evidentiary submission.)

Based in significant part upon the above forum selection clause, defendant filed on March 17, 2004 a motion to dismiss and alternatively to transfer to the United States District Court for the District of Massachusetts. The parties have presented the court with evidence and briefs supporting and opposing the motion. Following the filing of an amended complaint on May 11, 2004, defendant filed a similar alternative motion. And by its earlier order today, the court treated all evidence and briefs as addressing both motion, which are now under consideration.

Having considered all the foregoing, the court concludes that the forum selection clause is valid and enforceable. See P&S Business Machines, Inc. v. Cannon USA, Inc., 331 F.3d 804 (11th Cir. 2003). Certainly plaintiff has failed to demonstrate "that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." See The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1971). The alternative motion to transfer this action to the United States District Court for the District of Massachusetts is **GRANTED**, and this action is therefore **TRANSFERRED** to that court for all further proceedings.

DONE this 20<sup>th</sup> day of May, 2004.

  
 SENIOR UNITED STATES DISTRICT JUDGE

FILED  
IN CLERKS OFFICE  
TERMED TRANSF

U.S. District Court  
USDC for the Northern District of Alabama (Southern)

2004 JUN -7 P 1:55

CIVIL DOCKET FOR CASE #: 04-CV-342  
U.S. DISTRICT COURT  
DISTRICT OF MASS

Filed: 02/20/04

P & S X-Ray Co, Inc v. Hologic, Inc  
Assigned to: Judge James H Hancock  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None

Jury demand: Plaintiff  
Nature of Suit: 190  
Jurisdiction: Diversity

Cause: 28:1332 Diversity-Other Contract

04 11239 RGS

P & S X-RAY CO, INC, a  
domestic corporation  
dba  
Medical Imaging Systems  
plaintiff

J Gusty Yearout  
414-8199 fax  
[COR]  
Carol E Lambeth  
414-8199 fax  
[COR]  
YEAROUT & TRAYLOR  
800 Shades Creek Parkway, Suite  
500  
Birmingham, AL 35209  
414-8160

v.

HOLOGIC, INC, a foreign  
corporation  
defendant

Patricia Clotfelter  
488-3715 fax  
[COR]  
Harriet Thomas Ivy  
488-3826 fax  
[COR]  
BAKER DONELSON BEARMAN CALDWELL  
& BERKOWITZ PC  
SouthTrust Tower, Suite 1600  
420 North 20th Street  
Birmingham, AL 35203-5202  
328-0480

A TRUE COPY  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
BY: *Daryl L. Mathis*  
DEPUTY CLERK

Proceedings Include All Events.

TERMED

2:04cv344 P &amp; S X-Ray Co, Inc v. Hologic, Inc

TRANSF

2/20/04 1 IMG COMPLAINT with req to serve dft by certified mail thereon, filed, amount paid \$ 150, receipt # 200-200489 (jlm)  
[Entry date 02/24/04] [Edit date 02/24/04]

2/24/04 -- SUMMONS and complaint issued-mailed certified mail (jlm)

2/26/04 2 SUMMONS and complaint returned executed: upon defendant Hologic Inc thru Dontha Brown on 2/25/04, filed (jlm)

3/17/04 3 IMG MOTION by defendant to dismiss for improper venue, or, in the alternative, to transfer case filed cs (dr)  
[Entry date 03/18/04]

3/17/04 4 BRIEF by defendant in support of motion to dismiss, or in the alternative, motion to transfer filed cs (dr)  
[Entry date 03/18/04]

3/17/04 5 SUBMISSION of discovery by defendant in support of motion to dismiss, or in the alternative, motion to transfer filed cs (dr) [Entry date 03/18/04]

3/19/04 6 IMG ORDER that the pla is directed to file a response to dft's 3/17/04 motion by 4/9/04; Cs Mgmt ddl 4/9/04 filed ( by Judge James H. Hancock ) cm (dr)

4/9/04 7 RESPONSE and brief in opposition by plaintiff to dft's motion to dismiss for improper venue [3-1], motion to transfer case [3-2] filed cs (dr) [Entry date 04/13/04]

4/13/04 -- DOCKET modification (utility event) Cs Mgmt ddl satisfied 4/9/04 (dr)

4/14/04 8 IMG ORDER that the pla is directed to produce documents referenced within its complaint by 4/21/04; Notice of Compliance ddl 4/21/04; dft is directed to respond to both the pla's response of 4/9/04 as well as to pla's production pursuant to this order; filed (by Judge James H Hancock) cm (dr)

4/21/04 9 AFFIDAVIT of Marc Schaefer filed with exhibits attached cs (dr) [Entry date 04/22/04]

4/22/04 -- DOCKET modification (utility event) ; Notice of Compliance ddl satisfied 4/21/04 (dr)

5/5/04 10 RESPONSE by defendant to pla's response in opposition to dft's motion to dismiss and motion to transfer [7-1] filed cs (dr)

5/5/04 11 SUBMISSION of discovery by defendant in support of its motion to dismiss and motion to transfer filed cs (dr)

5/11/04 12 IMG AMENDED complaint filed by plaintiff P & S X-Ray Co, Inc [1-1]; jury demand filed cs (ma) [Entry date 05/12/04]

Proceedings Include All Filings.

TERMED

2:04cv344 P &amp; S X-Ray Co, Inc v. Hologic, Inc

TRANSF

- 5/19/04 13 IMG MOTION by defendant to dismiss pla's amended complaint filed cs (dr)
- 5/20/04 14 IMG ORDER on the amended complaint, dfts motions to dismiss or transfer; both motions are under submission and no further briefs or evidence will be permitted filed (by Judge James H. Hancock) cm (dr)
- 5/20/04 15 IMG ORDER granting motion to transfer case [3-2] Case transferred to Dist of: Massachusetts filed (by Judge James H. Hancock) cm; certified copy of order of transfer, certified copy of docket entries, and original record mailed 6/4/04 (dr) [Edit date 06/04/04]